DISTRICT OF COLUMBIA PATIENTS COOPERATIVE
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By Hand Delivery

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District of Columbia
1350 Pennsylvania Ave., N.W.
Suite 409
Washington, D.C. 20004

Re: Second Notice of Proposed Rulemaking -- Legalization of Marijuana for Medical Treatment Initiative—Implementation of Legalization of Marijuana for Medial Treatment Amendment Act of 2010

Dear Mr. Parker:

District of Columbia Patients' Cooperative, Inc., is pleased to submit these comments on the proposed rules. District of Columbia Patients' Cooperative, Inc. ("DCPC") is a District of Columbia non-profit corporation formed and managed by D.C. residents, for the purpose of advocating for the interests of and serving qualifying patients in the implementation of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, 2010 D.C. Laws 18-210 (the "Act"). DCPC intends to apply for registration of a cultivation center and a dispensary, pursuant to the Act and the regulations that are ultimately adopted by the District Council.

The directors and officers of DCPC have extensive experience with advocacy for medical marijuana patients, have been involved from the outset in advocating for the Initiative and the Act, and have carefully studied the experience of other states in which marijuana can lawfully be cultivated and distributed for approved medical purposes.

General Comments

DCPC applauds the careful, thoughtful and extensive effort that has been put into the development of the proposed rules. In many respects, the proposed rules will help accomplish the purposes of the Initiative and the Act in making marijuana available for medical purposes to those patients who legally qualify for its use, without undue burden, while preventing unlawful diversion. In five general areas, however, the overall basis for and structure of the proposed rules should be revisited.

First, the regulations are absent of any formal guidance concerning how the medicine will be tested. DCPC believes that there needs to be rules promulgated that allow for at least two testing facilities to be licensed by the Board. Absent of these rules, cultivation centers AND dispensaries will be required to purchase expensive scientific equipment that will provide very little overall quality control. Without an independent 3rd party organization to test the medicine and generate cannabinoid profiles, all medicine will be required to be tested twice-- first by the cultivation center and secondly by the dispensary in order to validate the cultivation center's testing results. This is redundant and should not be required. In jurisdictions were medical cannabis is regulated, the dispensaries and cultivation centers are not required to test the medicine themselves, instead 3rd party testing facilities are used to provide unbiased results. The applicable licensing fees concerning cultivation centers can be used for testing facilities and will ultimately ensure the program is sustainable and successful.

Second, there needs to be a definitive time window between when a patient submits their application and when the Department is required to send an acceptance or denial letter. Under the proposed regulations, a sick patient can be required to wait weeks, months, or even years-- there is no requirement for the Department to make timely decisions. DCPC suggests that rules state that patients must be notified within 7 days.

Third, the we still have strong concerns about the number of plants the current regulations allow. 95 mature cannabis plants, not counting seedlings and cuttings, would establish a basis for cultivation centers to have sustainable production to meet expected demand. We are very concerned that there will be shortages of medicine under these rules as proposed, and the price of cannabis will become unnecessarily high for dispensaries and ultimately, patients. Our calculations suggest that one ounce of medicine under these proposed rules will cost an upwards of $650 for patients, almost double what the patient might be able to purchase in the illicit market. By defining the number plants based on mature or immature status (flowering / non-flowering) the cultivation centers will be able to ensure a readily available supply of medicine.

Fourth, the amount of medicine allowed per month for marijuana-infused edible products is too little. As a concentrated form of medicine, edibles require more, not less marijuana. Edibles are more healthy than smoking, yet patients choosing edibles will be required to ration their medicine because they will run out far too quickly than if it were smoked given the amount edible products they are permitted to obtain per month. For example, if two ounces of medicine were used to make one dozen marijuana-infused granola bars, the patient would run out of medicine within twelve (12) days. Therefore, we suggest that the amount of medicine related to edibles be at least eight (8) ounces per month.

Fifth, the prohibition on caregivers with drug-related convictions is discriminatory and needs to be removed. The Act and both caregiver definitions outlined in this Title do not prevent caregivers with convictions from assisting qualified patients, instead there was one line added at 601.1(e) that needs to be removed. By not including this line in the definitions, its clear that this regulation was hastily added. Older adults, who are more likely than young adults to have a drug-related conviction, are disproportionately affected

by this discriminatory rule. Imagine telling your partner of 40 years, "sorry honey I can't be your caregiver because of that one time in 1969." If a qualified patient's chosen caregiver is not on probation or parole, then they should not be prohibited from being able to be a caregiver. Alternatively, if a conviction happened over 5 years ago, the potential caregiver should be considered in good standing and not should not be arbitrarily prevented from helping a loved one. Since patients and caregivers are prohibited from growing their own medicine, it makes no legitimate sense for caregivers to be judged differently than patients. It would almost make more sense for a caregiver who is disqualified under 601.1(e) to simply apply to be a qualified patient in order to help their patient because they could not be rejected on the same grounds. Without the ability for dispensaries to delivery medicine to their qualified patients and qualified patients prevented from choosing the person they feel most comfortable being their caregiver, this proposed rule will impact older patients and ruin the intent of the law.

DCPC's specific comments on the proposed rules are set forth below. The section numbers correspond to the section numbers of the proposed rules.

Chapter 300—Use by Qualifying Patient, Transportation by Caregiver and Limitations On medical Marijuana

Section 300.9(a): This rule limits the maximum amount of medical marijuana any qualifying patient or caregiver may possess at any time to two ounces of dried medical marijuana. The Act authorizes the Mayor, through rulemaking, to increase that quantity to up to four ounces; and to establish limits on medical marijuana in a form other than dried. Act, §4(a), D.C. Code §7-1671.03(a). We urge the Mayor to exercise that authority in this rulemaking, to increase to four ounces the quantity that a patient can possess at any one time at their home or medical treatment facility, with the proviso that no more than two ounces can be dispensed in any one transaction. Like any patient who refills a prescription before the patient completely runs out of the medicine, qualifying patients should be able to refill their prescriptions, for up to two ounces, before they completely run out of the marijuana previously dispensed. If this is to be allowed, however, a patient will necessary have somewhat in excess of two ounces in their possession at home or medical treatment facility at any given time. To provide for that situation, the permitted amount should be increased to four (4) ounces.

Section 300.9(b): This rule limits, to the equivalent of two ounces dried, the amount of medical marijuana in any other form that a patient may possess. As noted, the Act authorizes the Mayor, through rulemaking, to establish appropriate limits on the amount of medical marijuana in a form other than dried, that a patient may possess at any one time. Act, §4(a), D.C. Code §7-1671.03(a). Concentrated forms of marijuana—such as hash oil, tinctures and cannabis-infused edible items—typically require more cannabis to prepare than the amount of dried form that would be needed to produce the same effect. To allow physicians to recommend those forms of medical marijuana best suited to alleviating a patient's symptoms, the rule should permit possession by a patient of more than two ounces dried equivalent. We would suggest that an appropriate limit, expressed

as a dried equivalent, corresponding to a limit of four (4) ounces a suggested above, would be eight (8) ounces.

Chapter 400—Disposal of Medical Marijuana by Qualifying Patients and Caregivers

Sections 400.1 & 400.2: These rules require a qualifying patient or caregiver who is no longer registered, or whose registration is suspended or revoked, to return any unused medical marijuana to the Metropolitan Police Department. To avoid wasting medical marijuana that will be needed for low-income patients, and to help meet the needs of such patients, a qualifying patient/caregiver should be able to return unused medical marijuana to the dispensary for a partial refund. The dispensary will, under other provisions of these rules, be responsible for accounting for all medical marijuana delivered to and dispensed by the facility, so there is no practical danger of diversion. It would, however, be appropriate to require that, if the returned marijuana is unusable by the dispensary due to its condition, the dispensary deliver that marijuana to the MPD for destruction.

Chapter 500: Qualifying Patients

Section 501.1: To ensure that only bona fide D.C. residents can participate in the program, as intended by the Act, we suggest that to qualify, a patient must have resided in the District for at least six months prior to filing an application for registration.

Chapter 6: Caregivers

Section 601.1(e): This provision prohibits an individual from serving as a caregiver if he or she has ever been convicted of possession or sale of a controlled substance. The Act itself does not impose any such prohibition. Adopting such a prohibition in these rules would disqualify a family member, domestic partner or close friend of a qualifying patients from serving as a caregiver-- even if that individual had been convicted of a minor drug possession offense long ago. The proposed rules, section 5803.1, also prevent a dispensary from delivering medical marijuana to a patient, outside the dispensary. Therefore, for those patients unable to travel themselves to a dispensary and unable to select a caregiver due to this prohibition, there is no alternative for a qualified patient to obtain their medical marijuana under this program. Thus, there is no reason to burden patients from selecting particular caregivers by disqualifying them on this basis. As long as the chosen caregiver is not currently under parole or probation they should be able to assist their qualified patient.

Section 602.2: This section requires caregivers to pay for criminal background checks. The MPD, however, has access to the law enforcement databases needed to conduct such background checks, without incurring any incremental cost. There is no justification for levying a fee, and such a fee could impose an undue burden given that many caregivers are live-in relatives of low-income patients serving without compensation of any kind.

Chapter 7 — Issuance of Registration Cards

701.1(c) & 701.2(c): The registration identification number should be randomly issued in order to prevent misuse. If registration identification number is sequential (1, 2, 3, etc) instead of random it is possible for patients to have their program enrollment compromised by the creation of forged registration cards.

Chapter 8—Recommending Physicians

Section 800.1(c): This section effectively prohibits a D.C. physician from recommending the use of medical marijuana for a qualifying patient if the patient consulted with the physician for the "primary purpose" of determining whether use of medical marijuana is indicated. The effect of this rule is that, if a patient with a qualifying condition consults a new physician, licensed in D.C. and that doctor recommends use of medical marijuana in accordance with the Act and rules in that doctor's medical judgment, the recommendation will not be valid unless the patient continues to consult with that doctor on some undefined "ongoing" basis. In the meantime, the patient will be deprived of the use of medical marijuana in circumstances in which the Act clearly contemplates that the patient *will* be able to use the drug for medical purposes.

Further, the physician will effectively be punished by having her recommendation rendered invalid merely because the recommendation was made at the outset of the physician-patient relationship. "[P]hysician speech is entitled to First amendment protection because of the significance of the doctor patient relationship." *Conant v. Walters*, 309 F.3d 629, 636 (9th Cir. 2002), *cert denied*, 540 U.S. 946 (2003)(citing *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 884 (1992)). The *Conant* court enjoined a federal government policy that punished physicians from recommending medical marijuana on the grounds that the policy "condemns expression of a particular viewpoint, i.e., that medical marijuana would likely help a specific patient. Such condemnation of particular views is especially troubling in the First Amendment context." 308 F.3d at 637. As proposed section 800.1(c) likewise condemns expression by a physician, seeing a patient for the first or second time, of that same view, the proposed rule seems unlikely to survive constitutional scrutiny.

Section 801.1(f). The rule should not require a physician to include on the recommendation form the length of time the qualifying patient has been under that physicians' care. That information should be considered irrelevant for the reasons stated in our comments on section 800.1(c).

Chapter 9 — Denial of Applications

ADD: Section 900.3 — *Patients' application acceptance or denial by the Department shall made within 7 days of receipt.*

Currently there is no limitation on time between the receipt of an application and the acceptance or denial. Therefore, a sick patient could submit all the proper paperwork but be denied their medicine by the Department not being staffed properly or by choosing

to not issue any more registration cards. By creating a time window, patients will not be forced to wait weeks or months to hear back from the Department. Furthermore, provisions need to be made for patients to obtain cannabis medicine for emergencies on an expedited basis just as there are 24 for hour pharmacies dispensing medicine across the Washington, DC.

Chapter 10 — Enforcement Actions

Section 1000.3(A): This section conflicts with 5605.5.

ADD: *Section 1000.3(D) The return of unused medicine to a qualified patients' dispensary shall be permitted.*

Chapter 12—Investigations and Inspections

Section 1200.1: This section does not comply with 5702.2 (5701.3). While it is clear that the Department of Health must have authority to conduct unannounced inspections of cultivation centers and dispensaries, the proposed rule should be amended to make clear that cultivation centers may require Department officials to don appropriate protective coverings—sterile clothes, gloves, and a mask in particular—before entering a cultivation center. Introduction of foreign agents such as bacteria, insects, etc. into a cultivation center could easily destroy an entire crop, ruining months of work by the center and depriving patients of a needed source of supply. For that reason, cultivation center personnel will themselves, as a matter of course, be required to wear protective gear. Any authorized officials from the Board, the Department, or MPD entering a cultivation center should be subject to a similar requirement and the center should have the right to deny access to a government official who is not using such gear.

Chapter 13—Fees

Section 1300.1: Many patients with the debilitating and life-threatening conditions that qualify them for use of medical marijuana, under the Act and these rules, are low-income individuals already struggling to make ends meet. Although reduced fees are provided for individuals with incomes less than 200% of the federal poverty level, many patients with incomes exceeding that level would still fall into this category. For example, a single individual with HIV and an income of only $22,000/year would not qualify for the reduced fees under section 1300.2. Further, because no health insurance plan covers the use of medical marijuana, these low-income patients already face a significant financial burden in availing themselves of the program. For these reasons, we believe that qualified patients should be required to pay no more than $50 for the registration fee. Caregivers, too, in most cases, are uncompensated volunteers, who should not have to incur a significant financial burden in order to help the patient; their registration fee should similarly be no more than $50. The renewal fees should be reduced to $25, given that the information needed to process the renewal will already be on file with the Department of Health. Replacement cards should be issued at no charge.

Section 1300.2: Individuals with incomes below 200% of the federal poverty level, who already face a severe challenge in being able to afford participation in the program on top of other medical costs, should not have to pay anything at all to register or to renew their registrations.

Chapter 51—Registration, License and Permit Categories

5102—Registration, License and Permit Fees

Section 5102.2: The combination of substantial annual registration fees, and low daily penalty for failure timely to apply for renewal, will create an incentive for registrants not to make timely applications for renewal. The result could well be that a number of delinquent registrants do not obtain proper renewals, but still have their registration count against the maximum number of permitted facilities accessible by qualified patients. For this reason, after a certain period of delinquency in submitting an application for renewal of a registration for a cultivation center or dispensary, the registrant's registration should be revoked.

Section 5102.4: As noted above, a dispensary is a facility distributing a controlled substance for medical purposes. The proposed fee for registration of a dispensary, however, is vastly more than the fee payable in D.C. for a license from the Board of Pharmacy ($280) or the fee payable to HRLA for a license of a health care provider to distribute controlled substances ($130). It is difficult to understand the rationale or justification for charging an annual fee for registration of a dispensary that is 30-50 times the amount charged for fees for other licenses needed to distribute controlled substances for medical purposes. It is true, of course, that far fewer dispensaries will be registered than the number of pharmacists who are licensed each year. But the selection of which dispensaries will be registered should not turn on the ability of an applicant to afford an exorbitant fee.

Section 5102.5: A $5,000 annual licensing fee for a cultivation center would make it economically impossible to operate such a center, given that a center will not be permitted to cultivate more than 95 plants at any one time. (*See* proposed rule 5804.1). Given this limitation, a cultivation center will be able to harvest no more than about 285 plants per year. If the annual licensing fee is $5,000, the cost of the annual fee alone would amount to $17.54 *per plant*, not including any other costs. This cost, plus the application fee, will be passed on and marked up by the dispensary, resulting in very significant costs to the qualifying patient. We would suggest that, in the absence of compelling evidence that a higher fee is needed to fund the administration of the registration of cultivation centers, a fee of $5 per plant, amounting to $1,500 per year, would be far more reasonable.

5103—Application Fees

Section 5103.1: The proposed amount of $5,000 for the application processing fee, for a dispensary registration, is exorbitant and not consistent with the fees charged for processing applications for analogous licenses. Again, if the dispensary registration

process is handled by the Department of Health, and treated in a manner similar to the licensing of pharmacists and health care providers dispensing controlled substances--as we believe should be the case—the fee of $280 for a pharmacy license actually includes the non-refundable application fee of $85. There is no conceivable justification for charging more than 50 times this amount for processing an application for a dispensary registration.

Section 5103.2: For the reasons stated in our comments on proposed section 5103.1, the processing fee of $5,000 for an application for registration of a cultivation center is also exorbitant and unjustified.

Section 5103.3. For the reasons stated in our comments on proposed rules 5413.1 et seq.,. We believe that transfer of a dispensary registration to a new owner should not be permitted; rather, any new owner should be required to apply for a new registration.

Chapter 52—Registration Limitations

5200—Limitation on the Number of Dispensaries and Cultivation Centers

Section 5200,.2. The Act does not limit the number of cultivation centers, but rather authorizes the Mayor to determine the appropriate number by rulemaking. Act §7(d)(3); D.C. Code §7-1671.06(d)(3). Each cultivation center will be limited to cultivating 95 plants at any one time. It makes no sense to determine, arbitrarily, at the outset of the program that the total supply of medical marijuana should never exceed 950 plants (10 centers X 95 plants), in the absence of any experience with actual demand by qualifying patients. A more responsible approach would be to provide for an initial limit of ten centers, for the first six months of the program, with reassessment by the Department of Health every six months thereafter, and to authorize the Department to increase the number of centers and invite additional applications for registration whenever the Department determines that there is a significant risk that the demand for medical marijuana by qualifying patients will exceed the available supply.

Chapter 53—General Registration Requirements

Sections 5302.1 and 5302.3: Section 5302.1 provides that the Board may approve—but not grant— a registration for a cultivation center or dispensary prior to issuance of a certificate of occupancy, subject to the condition that the applicant will not engage in purchase or sale of medical marijuana until the COO and all other business licenses have been issued for the business. Section 5302.3 provides that the Board may grant the registration only after the COO and other business licenses have been issued. The Mayor should ensure that the Department of Consumer and Regulatory Affairs is made aware, upon issuance of these rules, that cultivation centers and dispensaries are legitimate commercial businesses, within applicable zoning classes; that COO's should be issued in the same way as for other businesses; and that DCRA should assess its own regulations and promptly undertake any rulemakings necessary to ensure that cultivation centers and dispensaries can be treated in the same way as any other commercial business.

Chapter 54—Registration Applications

5400—General Qualifications for All Applicants

Section 5400.1: The qualifications set forth in this proposed rule for an "applicant" appear to apply only to applicants who are individual persons. Many, if not most, applicants for registrations will be *entities* such as for-profit or non-profit corporations. The qualifications for registration as an officer, director, incorporator or manager of a dispensary are set forth elsewhere in the Act and proposed rules. The rule should be clarified to indicate what requirements apply to which individuals holding particular roles in an entity, and which requirements are intended to apply to the entity itself.

Section 5402.1(a)5(B) & Section 5402.1(b)5(B) "Product Safety & Labeling Plan" - The regulations need to permit the licensing of at least two testing facilities in order for cultivation centers and dispensaries to validate the cannabinoid profile of the medicine and to ensure the medicine is free of contaminants. Currently the rules do not permit a 3rd party testing facility to be licensed and without this facility patients, the Board, and the Department will be required to trust the cultivation centers and dispensaries. Furthermore, there will be no oversight in the actual testing. See comment under Section 5607.1.

5403—Application Format and Contents

Section 5403.1(i) – We believe this section should be removed entirely. Essentially this section says that District government can, at any time, can violate its own dutifully passed laws on the whim of the Federal government. At the very least this section should be changed to ensure that the Mayor will not cooperate with any entity that intends to interfere with the administration of the program outlined in this Act and title. Dispensaries or cultivation centers should not be forced to give up their right to due process.

Section 5403.5 — Remove this section. Creating transferable licenses invents a commodity and opens the system to corruption. All registrants licensed under these rules are performing a public health service and should not be permitted to be sold on the open market like a liquor license. Any transfer of license should be held to the same registration process outlined in 5402.

5404—Dispensary Registration Application Requirements

Section 5404.1(d) — This section requires an applicant to identify from which cultivation centers medical marijuana will be obtained. Except in the case of a dispensary which will include a cultivation center on site, this requirement makes no sense, because it will not be possible for any applicant for a dispensary registration to identify cultivation centers from which medical marijuana will be obtained until the

Board first issues registrations for such cultivation centers. Furthermore, qualified patients will not be able to visit the cultivation centers because only registered staff will be allowed entry. This section should be updated to say "A cultivation plan, *if applicable.*"

5414—Additional Considerations for Transfer to New Owner

We believe that this entire section should be deleted and that registrations for cultivation centers and dispensaries should not be transferable, at all. Rather, any entity wishing to obtain a registration for any existing or new facility should be required to apply for an entirely new registration. A registration for a cultivation center or dispensary is not like a liquor license that may appropriately be transferred by the owner to any other qualified owner willing to pay the asking price. Rather, a registration for a cultivation center constitutes authority to perform an important public health function and should not be sold to the highest bidder.

For that reason, if a registrant discontinues operation of a cultivation center or dispensary for any reason, the Board should invite qualified entities to apply for that registration and should select the best qualified applicant based on the factors set forth in proposed rule 5402.

5415—Involuntary Transfers

For the reasons set forth in our comments on the proposed rules under subchapter 5414, we believe that involuntary transfer of a registration for a cultivation center or dispensary should not be permitted. Just as a license for a pharmacist, or a permit for health care provider to dispense controlled substances, cannot be involuntarily transferred as personal property, so too should involuntary transfer of a registration for a dispensary or cultivation center be prohibited.

Chapter 55—Registration Changes

Section 5500.1: The Mayor may wish to adopt certain restrictions on the trade or corporate names for entities registered for cultivation centers or dispensaries. However, as long as a trade or corporate name does not violate those restrictions, the applicant should not have to obtain prior approval from the Board. Such approval of trade or corporate names is not required for any other type of business and the requirement to obtain such approval raises significant First Amendment concerns.

5604—Manager's License

Section 5604.1: Non-profit corporations do not have "owners." The rule should be clarified to provide that each registrant that is an entity must have one person designated as a manager; that such person must obtain a manger's licenses; and that the manager must be present during the hours the cultivation center or dispensary is open.

5605—Destruction and Disposal of Unused or Surplus Medical Marijuana and Reporting Theft

Section 5605.5(a): These regulations do not permit patients from returning their medicine to their dispensary. Due to years of prohibition, its unlikely patients will feel comfortable returning their medicine to MPD and doing so would be illegal under these regulations. If medical marijuana returned to a dispensary by a patient is still useable, the dispensary should be able to distribute it to other patients, in order to help keep costs down for the patient population.

5607—Labeling and Packaging of Medical Marijuana

Section 5607.1: Subsection (d) of this proposed rule requires that the label affixed to any container of medical marijuana must state the "cannabinoid profile" of the medical marijuana. In order to obtain a cannabinoid profile, however, a dispensary would need to purchase a mass-spectrometer and gas chromatograph—at a cost of well over $250,000 per year. Even if a dispensary could find a laboratory within the District of Columbia that could perform the necessary testing, the cost would be prohibitive and it would be unlawful in any event to transport medicine to and from the laboratory for testing. The Department should provide at least two licenses to District-based laboratories through rulemaking or the requirement for such testing should be eliminated. Furthermore, without a third party to validate the cannabinoid profile, how can the profile be trusted? The potential effect of this rule is to require both cultivation centers and dispensaries to purchase this equipment in order to validate the cannabinoid profile offered by a cultivation center when selling the medicine to a dispensary.

Section 5607.3: The second sentence of this rule applies only to ingestible items and should be included in that section.

Section 5607.7: Any label that includes the seal of George Washington, also known as the D.C. flag should not be prohibited. If the flag is used, however, the labeling should be required to state that the product is not endorsed, manufactured or used by the District of Columbia Government.

Section 5607.10: Labeling should be required to comply with the applicable requirements as set forth in the rules. Labeling that violates the rules should be prohibited and appropriate penalties imposed. There is no reason or justification to require advance approval of labeling by the Board, the Department, or MPD.

5609 — Permitted Forms of Medical Marijuana

Section 5609.1: States "Medical marijuana shall be subject to testing and quality assurance and safety purposes." What regulatory agency will be in charge of testing the medicine? Will the dispensaries be required to test? Will the cultivation centers be

required to test? Will the Board be required to test? Will MPD be required to test? Will the Department be required to test? This regulation is vague and needs clarification. If the testing is done in-house by a cultivation center or dispensary, who will validate the testing? The statute does not explicitly require testing or the generation of a cannabinoid profile on the packages of medicine. Therefore the rules need to be revised and in the interim the a cannabinoid profile requirement made *optional* or removed enitrely from the rules. See comments in 5607.1.

5613—Temporary Surrender of Registration—Safekeeping

Sections 5613.1 & 5613.2: Under these proposed rules, if a registered cultivation center or dispensary discontinues operations, the center or dispensary could retain its registration for up to four years without operating the center or dispensary. Given that only a limited number of centers and dispensaries will be licensed, such a result could prevent qualified patients from being able to obtain needed medicine. If operations are discontinued for one year or more, the registration should be cancelled and the opportunity to apply for the registration should be extended to new applicants.

For reasons stated in our comments on section 5413, a registrant that discontinues operations should not be permitted to sell a license. Any entity wishing to obtain that registration slot should be required to file a new application for a registration.

5620—Manufacturing Standards

Section 5620.3: Is Carbon Dioxide (CO2) considered a "synthetic growth regulator?" Growers commonly use CO2 to help speed up growth of the plants when growing indoors and this molecule is naturally found on earth. We believe this gas should not be prohibited.

5621—Transport of Medical Marijuana

Section 5621.1: Are "contracted agents" required to be licensed under the rules? Or are they going to be subcontracted by the cultivation centers for delivery? What regulations are there in place to ensure these contracted agents are properly licensed under the scope of these proposed rules?

Chapter 57—Enforcement, Infractions and Penalties

5700—Mandatory Revocation of Director, Officer, Member,Incorporator, Agent and Employee Registration

5701—Mandatory Revocation

Section 5701.1(c). This proposed rule would require the Board to revoke a registration when the "registration holder" has been convicted of a felony or misdemeanor for a drug-related offense. It is unclear how this requirement would apply to a registration holder

that is a for profit or nonprofit corporation. It makes no sense to revoke a registration by reason of the conviction of a single employee. Instead, the language should be amended to clarify that mandatory revocation is required only when the manager has been convicted of a drug related offense. Further, the language should be clarified to exclude a conviction for conduct that is permitted by the Act.

Section 5701.2(d). For the reasons set out in our comments on sections 1200.1, 5702.2 (5701.3), and 6205.1, the language of section 5701.2(d) should be amended to make clear that requiring Department, the Board, or MPD officials to don protective gear before entering a cultivation center would not constitute as unlawfully interfering or impeding an inspection of the premises.

5702.2: This section should be labeled as 5701.3

5803—Delivery of Medical Marijuana

Section 5803: This entire section needs to be revised or removed entirely. By preventing family members from acting as caregivers the ability for many patients to obtain their medicine is compromised. Furthermore, for medical treatment facilities, where multiple patients may reside, licensed delivery is the safest and most efficient means for qualified patients who cannot physically obtain their medicine. The rules should permit a dispensary to apply for and obtain a specialized transport permit, so that the dispensary can transport medical marijuana to qualified patients or to their medical treatment facilities when patients are physically unable to visit the dispensary and a registered caregiver is unavailable to go to the dispensary to pick up their medical marijuana.

5804—Plant Limitations

Section 5804.1: In order to ensure an adequate supply of medical marijuana within the 95-plant limitation, cultivation centers must be able to clone existing mature plants in order to grow new plants. A cutting cannot produce useable marijuana, however, unless and until it reaches the flowering stage, in the vegetative cycle. The term "living marijuana plant" should be defined to exclude plants that have not yet reached the flowering stage.

Chapter 59—Advertising

5900-Sign Advertising

A registered dispensary has a First Amendment right to make truthful statements about a product it is selling lawfully. Accordingly, this subchapter 5900 should be deleted.

Chapter 60—Records and Reports

6003—Cultivation Center Reports

Section 6003.2—Subsections (c), (d), and (g): The quantity, nature and price, of paraphernalia manufactured by a cultivation center, and the total costs of the center, constitutes proprietary information that is not needed in any way by the Board in order to prevent diversion of medical marijuana and exercise appropriate oversight. These items should be deleted.

6004—Dispensary Reports

Section 6004.2—Subsections (d) & (e): This information is proprietary and again, not needed in any way by the Board in order to prevent diversion of medical marijuana and exercise appropriate oversight. These items should be deleted.

6005—Sliding Scale Registration

Section 6005.1—With fifteen (15) licenses being open for registrants, and only five (5) of the licenses being awarded to dispensaries, the Sliding Scale Registration Program is financed by only one-third (1/3) of the businesses permitted under this Act. It would be more practical for all licensees to contribute equally to this program. Therefore we suggest changing the text to "All *registered cultivation centers and dispensaries* devote two percent (2%) of its gross revenue.."

Chapter 61—Board Review Procedures

6102—Board Decisions

Sections 6102.3 & 6102.4: The rules should require the Board to address, in its findings of fact and conclusions of law, the specific factors set forth in section 5402. In addition, section 6102.4 should be reworded to make clear that the Board is to select from among competing applications based on the factors set forth in section 5402.

Chapter 62—Enforcement Hearings

6200—Revocation, Suspension or Fines—General Provisions

Section 6200.3: There is no reason to disqualify an entity whose registration is revoked from applying for another registration for as long as five years. The period of disqualification should be reduced to one year.

Section 6200.4—The period of disqualification should be reduced to one year.

Section 6200.6(d): This subsection contemplates that MPD officers will able to inspect all of the records of a dispensary, including the copies of physicians' recommendations that contain the confidential medical records of patients. A dispensary should not be required to make available for inspection by law enforcement personnel that portion of its records containing confidential medical information. Such records are normally unavailable to law enforcement without a court issued warrant or subpoena.

6205—Examination of Premises and Books and Records

Section 6205.1: Dispensary staff should not be required to disclose confidential patient medical records to law enforcement personnel without a court-issued warrant or subpoena. See our comments on section 6200.6(d). In addition, cultivation centers should be allowed to require law enforcement personnel to don protective gear before entering the premises as stated in sections 5702.2 (5701.3) and 1200.